(1992) 09 NCDRC CK 0056

In the National Consumer Disputes Redressal Commission

NARSUNS BATTERY MANUFACTURING CO. PVT. LTD. APPELLANT

Vs

GENERAL MANAGER, ANDHRA BANK RESPONDENT

Date of Decision : 01-09-1992

Acts Referred:

Citation : 1992 0 CPC 707 : 1992 2 CPJ 546 : 1992 2 CPR 702 : 1993 1 CLT 390 : 1993 2 CLC 129

Hon'ble Judges : V.Balakrishna Eradi , Y.Krishan , B.S.Yadav J.

Final Decision : Petition dismissed

Judgement

1. IN this petition dated 20th of November, 1991, the complainant has claimed Rs. 35 lacs as compensation for deficiency in the banking services rendered or to be rendered by the respondent - Andhra Bank.

2. THE relevant facts briefly are that the petitioner is a Small Scale Industry manufacturing P.V.C. Battery Separators. For running its industry, it had asked for a loan and the respondent- Bank had sanctioned on 1.9.1988 a term loan of Rs. 3.00 lacs against equitable mortgage of site and shed and hypothecation of machinery. Over- draft Case Credit of Rs. 2.30 lacs and documentary bills purchase Rs. 1.00 lacs, thus totalling loans/ credit of Rs. 6.30 lacs. THE petitioner had offered personal guarantee of Directors of the value of Rs. 9.00 lacs and 4 acres of land of the value of Rs. 10.00 lacs as collateral securities. On 16.9.1988 within two weeks of sanctioning of loans/credit the Bank was advised by its Legal Adviser that there was a minor shareholder in the land offered as collateral security and that land equal to Ac. 1.01 cents should be excluded from consideration while accepting the property as security. On 29th July, 1989 the respondent-Bank informed the petitioner that in the collateral security offered by them for the loan, l/4th share belonging to the minor should be eliminated from the security value and that, therefore, the petitioner should provide another collateral security of the value of Rs. 2.50 lacs to regularise the loans already sanctioned and credited. THE petitioner was not able to offer ''additional'' collateral security in place of the minor''s share. It, however, maintained that the

securities offered were four times of the loan amount and that the Bank had already released amounts after verification of the securities. It bemoans that a small scale industry has been crippled by the bad financing procedure adopted by the Andhra Bank. In fact it contended that as per the guidelines issued by the Indian Bank''s Association "no collateral securities need be obtained from small scale industries." The second complaint of the petitioner is that the Bank in order to secure its interest in the property of the petitioner for the loans advanced, had got the Building, Plant and Machinery and materials insured with the Respondent No. 3 United India Insurance Company for risk against fire only. It had not insured for damage by cyclone or natural calamities even though the area in which the factory is situated is cyclone phone area.. The policy of insurance was taken out by the respondent - Bank in October, 1989 but the factory shed, the machinery etc, suffered damage due to the cyclone and flood on the 10th of May, 1990. The damage is assessed at Rs. 6.15 lacs but the respondent-Insurance Company did not admit the claim on the ground that the insurance policy was a fire policy only and did not cover damage due to cyclone. According to the petitioner heavy loss was caused to it due to the negligence and improper insurance coverage by the respondent Bank.

The third complaint is that the Bank has not provided additional loan for the revival of the Complainant Company in the post-cyclone period as agreed to in March 1991. On the other hand the Respondent Bank filed a suit for recovery of its outstanding loans.

3. THE Respondent - Bank has disclaimed any deficiency in the service on its part. At the outset, it pointed out that a suit for recovery of Rs. 6,60,697.34 has been filed by the Respondent - Bank against the petitioner - complainant on 27th September, 1991 in the Court of the Subordinate Judge at Visakhapatnam. Thus the case is already sub judice and it is open to the petitioner to make its claims in the suit filed by the Respondent. The respondent - Bank has also submitted that it was within its right to ask for adequate security and to ask for the exclusion of the share of the minor in the security offered and to ask for the substitute security of equivalent value. It has further pointed out that the complainant-petitioner was under the obligation to deal exclusively with the respondent - Bank till all its liabilities under the various loans granted to the complainant were settled or cleared but in violation of this condition, the complainant opened an account with the State Bank of India and had started its transactions through the said Bank.

4. AS regards the insurance of the fixed and floating assets of the borrower, the respondent- Bank has submitted that in the agreements for Cash Credit and for Hypothecation of Movable Machinery, it was stipulated that it was the responsibility of the borrower to get the assets insured against such risks as the Bank deems it necessary like fire, riot and civil commotion etc. and that the said policies would be assigned to the Bank for its own benefit. Only in the event of default it was open to the Bank to renew the said policies at the expense of the

insured. From the ''Agreed Bank Clause'' attached to the Fire Policy, it is also evident that the complainant was the Insured and the Bank was only the Agent of the Insured in the matter of arranging for the insurance of the assets. It was also open to the complainant to advise the Bank to obtain a comprehensive insurance policy covering damage by cyclone, floods etc. The respondent-Bank has, therefore, disclaimed any deficiency on its part in the matter of the insurance of the assets of the complainant-borrower. The respondent - Bank has further submitted that it did not consider it expedient to provide any financial assistance for the revival of the unit in 1991 as the respondent considered that the unit was not suitable for revival with the existing management, that the product was too technical and that the entrepreneur lacked managerial expertise. On a consideration of all the facts brought out by the record, we do not find that there was any deficiency in service on the part of the respondent- Bank. The complaint is, therefore, dismissed. There is no order as to costs. Petition dismissed.